

REMARKS

This Application has been carefully reviewed in light of the Notice of Non-Compliant Amendment dated August 24, 2005. Applicant respectfully requests reconsideration and favorable action for this Application.

The Examiner pointed out that Claim 1 was indicated as being currently amended in the previous Response to Examiner's Action when no apparent amendments were shown to be made. Applicant has adjusted the status identifiers for Claims 1 and 22 to show that they were previously presented in light of the erroneous currently amended indication. For the Examiner's convenience, the remainder of this Response to Notice of Non-Compliant Amendment includes the remarks provided in the previous Response to Examiner's Action.

Claims 1-3, 5, and 22-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Caccavale, et al. Independent Claims 1 and 22 recite in general predicted responsiveness indicators being operative to predict a response time of each of the plurality of servers based at least in part on response time data and aging of the response time data gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. By contrast, the Examiner readily admits that the Brendel, et al. patent fails to disclose the use of predicted responsiveness indicators to predict server response time. To support the claimed predicted responsiveness indicators and prediction of server response time, the Examiner cites the Caccavale, et al. patent in combination with the Brendel, et al. patent. However, the Caccavale, et al. patent merely discloses sending out probes and identifying the length of time it takes a server to respond to the probe. The Caccavale, et al. patent does not

disclose the use of any aging factor associated with its measured server length of response time. Thus, the Caccavale, et al. patent does not take into account an aging factor of response time data as provided by the claimed invention. The portion of the Caccavale, et al. patent cited by the Examiner merely discloses comparing the current response time information for a probe to baseline response time information and previous response time information for that probe. The degradation values obtained from these comparisons merely identify whether a server is overloaded. However, there is no aging applied to any response time information in the Caccavale patent. Thus, the Caccavale patent does not predict a response time of each of the plurality of servers based at least in part on response time data and aging of the response time data as required by the claimed invention. Therefore, Applicant respectfully submits that Claims 1-3, 5, and 22-25 are patentably distinct from the proposed Brendel, et al. - Caccavale, et al. combination.

Applicant notes that the Examiner has failed to provide an examination of Claims 26-29 which were added in the Request for Continued Examination. Applicant respectfully requests the Examiner to provide an examination of pending Claims 26-29.

CONCLUSION

Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

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